

MEMORANDUM OF LAW

DATE: October 10, 1988

TO: Mayor Maureen O'Connor

FROM: City Attorney

SUBJECT: Potential Conflict of Interest Arising From  
Anticipated Purchase of Real Property and  
Receipt of Conventional Bank Loan

During a recent council meeting, you orally advised me that you are considering purchasing some real property with your husband in Mendocino County. Such a purchase may involve receiving a conventional loan from Home Federal. Realizing the City is in litigation with Home Federal regarding the Grant Hotel, you want to know whether receipt of a conventional loan would disqualify you from any decisions arising in the lawsuit.

The fundamental conflict of interest law is embodied in the Political Reform Act of 1974, codified at Government Code section 87100 et seq. The basic rule governing disqualification appears in Government Code section 87100, which states:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

The term "financial interest" is defined in Government Code section 87103. This code section reads in relevant part as follows:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on:

....

(c) Any source of income ... other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received

by or promised to the public official within  
12 months prior to the time when a decision is  
made. ¶Emphasis added.σ

Given the express exclusion of conventional loans from commercial lending institutions, we have no hesitancy in confirming our oral advice that receipt of same would not disqualify you from participating in a decision in the referenced litigation. By necessity, this advice is limited to the receipt of a loan in the regular course of business on the same or similar terms available to the public.

Similarly the receipt of a conventional loan at market rate terms would not "tend to impair" your judgment under Council Policy 000-4 Code of Ethics the standards of which are potentially more stringent than the Political Reform Act.

In short, we see no prohibition to your participation in decisions concerning the litigation simply because of a conventional loan received at market rates.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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